

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
PECOS DIVISION

UNITED STATES OF AMERICA, . Case No. 4:19-CR-00774-DC  
Plaintiff, . Appeal No. 21-50607  
v. .  
THOMAS ALAN ARTHUR, .  
Defendant. . Tuesday, June 22, 2021  
. . . . . 3:38 P.M.

TRANSCRIPT OF SENTENCING HEARING  
BEFORE THE HONORABLE DAVID C. COUNTS  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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WITNESSES:

FOR THE GOVERNMENT:

(None.)

FOR THE DEFENDANT:

(None.)

EXHIBITS:

FOR THE GOVERNMENT:

(None.)

FOR THE DEFENDANT:

(None.)

1           MIDLAND, TEXAS, TUESDAY, JUNE 22, 2021, 2:35 P.M.

2           THE COURT: The Court calls U.S. v. Thomas Alan  
3 Arthur in PE:19-CR-00774 today for sentencing.

4           MR. BERRY: Good afternoon, Your Honor. Austin Berry  
5 for the United States.

6           THE COURT: Yes, sir.

7           MR. HAYGOOD: Good afternoon, Your Honor. Mark  
8 Bennett and Lane Haygood for Mr. Arthur who is also present.

9           THE COURT: Very good.

10          Mr. Arthur, you're Thomas Alan Arthur, correct?

11          THE DEFENDANT: Yes.

12          THE COURT: Yes?

13          THE DEFENDANT: Yes.

14          THE COURT: Okay. And, Mr. Bennett, you and Mr.  
15 Haygood continue to believe Mr. Arthur is competent, correct?

16          MR. HAYGOOD: We do, Your Honor.

17          THE COURT: All right. The Court having reviewed the  
18 presentence investigation report will ask Mr. Bennett -- I  
19 guess, Mr. Bennett, you're going to speak for Mr. Haygood at  
20 this point at least. Have you reviewed the presentence  
21 investigation report with Mr. Arthur? Mr. Haygood actually  
22 has?

23          MR. HAYGOOD: Yes, we have Your Honor.

24          THE COURT: Very good.

25          Mr. Arthur, you have reviewed the report. Is that

1 correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Haygood or Mr. Bennett, either one, I  
4 know there are several objections. Let me first ask you are  
5 there any corrections, I'm not asking about objections, any  
6 corrections to the report, again, other than objections that  
7 have not been made that you all wish to bring to the Court's  
8 attention

9 MR. HAYGOOD: I don't believe so, Your Honor.

10 THE COURT: Okay. And let's go to objections and who  
11 wants to address those?

12 MR. HAYGOOD: I can address them Your Honor.

13 THE COURT: Come on up here then.

14 MR. HAYGOOD: Okay. This podium, Your Honor?

15 THE COURT: Either one.

16 MR. HAYGOOD: Okay.

17 THE COURT: Whichever one you'd like best.

18 MR. HAYGOOD: Okay. Has the Court read through our  
19 objections and --

20 THE COURT: I have read through them all. I've read  
21 the probation officer's responses, as well. So --

22 MR. HAYGOOD: Very good. Then I won't --

23 THE COURT: Whichever ones you want to speak to, you  
24 can. If there are some you don't want to speak to, that's  
25 okay.

1 MR. HAYGOOD: Then I will not rehash some of the  
2 background facts that we've put in here. I think, Your Honor,  
3 a lot of this comes down to what is relevant conduct and what  
4 is not relevant conduct for the Court to consider in  
5 sentencing. For example, our third objection regarding the  
6 identity of the alleged users of the Mr. Double website.

7 I don't believe that that falls within the Court's  
8 definition of relevant conduct, specifically because there's no  
9 way that the Government could show or that there could ever be  
10 any proof as to what Mr. Arthur was or was not cognizant of  
11 with the -- who these users were. I mean they're using  
12 pseudonyms. They're not revealing their real identity to him.  
13 He doesn't have any way to run background checks or anything  
14 like that on him. And there's really no way for him to have  
15 sort of sifted through there to say, well, I find this person  
16 to be an objectionable user of my website or not.

17 So I don't think that that should be added in the  
18 relevant conduct. The same thing with all of the interviews  
19 and the allegations that were made about these other people  
20 allegedly from Mr. Arthur's past who are coming through here  
21 and making all of these statements, making all of these  
22 accusations.

23 Obviously, these were not things that were pled in  
24 the indictment. These were not things for which we received  
25 evidence. These were not things for which Mr. Arthur had a

1 contemporaneous opportunity to cross-examine these witnesses.  
2 They're not a part of the offense, and so I don't think that  
3 they should be considered as a part of relevant conduct.

4           And the other thing that I would like to speak to on  
5 this one, Your Honor, is the acceptance of responsibility  
6 points. And as this Court is aware, we did stipulate to a  
7 number of matters at the trial, which I believe it would  
8 entitle Mr. Arthur to at least the -- or, for sure, the two  
9 points for acceptance of responsibility on this since really  
10 the only issue that we kept live is the one that we had to to  
11 preserve matters for appeal which is whether these materials  
12 actually are obscene.

13           And that's the one thing that's very difficult to  
14 determine at the outset because that requires the application  
15 of contemporary community standards. It almost necessitates  
16 the finding of a fact finder with regard to whether these  
17 materials are obscene. So I believe that Mr. Arthur should get  
18 two credits or the two-point downward departure for acceptance  
19 of responsibility on that.

20           I will agree that the third point he would not get  
21 because we did take this to trial and we did not timely enter a  
22 guilty plea on that. And, also, just by way of preserving this  
23 argument, I think I know where the Court's going to come down  
24 on it but by way of preserving this argument for appeal, our  
25 seventh objection regarding whether the material involved the

1 sexual exploitation of a minor, there's no argument I think  
2 from any court or in this that any of the images or stories  
3 that were presented showed an actual minor. I mean some of  
4 them were drawings. Now whether those drawings were of minors  
5 or not, that was a fact issue that the jury resolved.

6 But looking at 7 and 8 in our objections, minor does  
7 not include an imaginary child on this one. So I would ask the  
8 Court to consider that and whether those applications apply.  
9 If there are any other particular ones the Court would like me  
10 to address, I can. But I know the Court's read them and I have  
11 a strong indication that the Court has probably had  
12 considerable briefing on this from court staff and --

13 THE COURT: I have.

14 MR. HAYGOOD: -- knows the law on this very well.

15 THE COURT: Thank you, Mr. Haygood.

16 Mr. Berry, do you want to respond to any of that or  
17 do you want to just wait?

18 MR. BERRY: Very little, Your Honor. I just want to  
19 --

20 THE CLERK: Use your microphone.

21 THE COURT: It may not be on.

22 MR. BERRY: It doesn't look like it's on. I'm sorry,  
23 Cristina.

24 THE COURT: There we go.

25 MR. BERRY: How is that?

1 THE COURT: Perfect.

2 MR. BERRY: Yeah, okay.

3 So the issues are relevant conduct, acceptance of  
4 responsibility points, and the actual minor issue.

5 THE COURT: Yes, sir.

6 MR. BERRY: In reverse order, the actual minor issue  
7 was largely briefed in the Defendant's post-trial motion for  
8 judgment of acquittal. I understand it's a slight nuance from  
9 the statutory definition of it to the Guidelines --

10 THE COURT: Right.

11 MR. BERRY: -- definition of it. But I don't think  
12 that there's any reason under the Guidelines to provide a more  
13 narrow definition of minor. And so all of that argument and  
14 law should be imported into this, I believe, and minor should  
15 still be applicable. It would make no sense for Congress to  
16 say you can be convicted of the statute but you can't be  
17 sentenced for it under a minor definition like the --

18 THE COURT: Right.

19 MR. BERRY: -- definition of the word "minor."

20 As far as acceptance of responsibility points, I  
21 think the Ragsdale case out of the Fifth Circuit settles that  
22 issue. Probation has addressed that, and I think that's spot  
23 on.

24 And as for the relevant conduct to the criminal  
25 history of the users, again, it doesn't affect the Guidelines.

1 But I do think it's relevant to include in the PSR so that the  
2 Court has a full view of the community that this Defendant  
3 created for purposes of the proliferation of this type of  
4 obscene material through the administration of this website.

5 And so whether he has knowledge, direct knowledge of  
6 the criminal history of his individual users is not the point.  
7 The point is that is a fact, that is a fact of his website, a  
8 fact of his website of he had a lot of users. And a not  
9 insignificant percentage of identified users that we know about  
10 did have criminal histories related to child exploitation.  
11 That is a relevant fact for understanding the scope, scale, and  
12 depravity of this particular website.

13 And so I think it should be included in the PSR and,  
14 at a minimum, should be even if it were not included in the  
15 PSR, I'd still be arguing it as a 3553(a) factor that this  
16 Court should take into consideration.

17 And as to the allegations by the two victims, I think  
18 that is absolutely critical for this Court to understand in  
19 assessing this Defendant's history and characteristics. And,  
20 again, I would make the same argument under a 3553(a) analysis  
21 if the Court didn't want to include it in the PSR. It is  
22 important for this Court to understand.

23 So whether it comes into the PSR as a technical  
24 matter or not, this Court absolutely should consider that fact  
25 and information and the Court is entitled to whether it's in

1 the PSR or not. And we would certainly be advancing it in that  
2 regard, as well.

3 But I think the probation officer got it spot on in  
4 pointing to 6A1.3 in what this Court can and cannot consider.  
5 And we think that that's the way the Court should rule on that  
6 issue. Thank you.

7 THE COURT: Thank you.

8 The Court -- Mr. Berry, are there any objections or  
9 corrections from the Government?

10 MR. BERRY: There's a very minor correction or --  
11 well, I guess at this point, it would technically be an  
12 objection.

13 THE COURT: Okay.

14 MR. BERRY: It pertains to Objection Number 2. It  
15 does not affect the Guidelines.

16 THE COURT: Objection 2 of the Government?

17 MR. BERRY: It's the Defendant's Objection Number 2  
18 that the --

19 THE COURT: Okay. Let me get to it. I've got it  
20 marked.

21 MR. BERRY: Yes, sir.

22 THE COURT: Yes, sir. I'm there.

23 MR. BERRY: It's Objection Number 2 by the Defendant  
24 that the probation officer just granted, and I think I just got  
25 the addendum finally emailed to me last week. I don't have

1 access to the same way it's uploaded so once I -- by the time I  
2 figure it out and I have to reach out and get it directly, I  
3 got this.

4           And I noticed that in objection Number 2 or, to be  
5 fair, my co-counsel, Ms. Morrison, noticed that in Objection  
6 Number 2, the probation officer granted that objection saying  
7 -- and it was about whether the Defendant -- whether there was  
8 testimony at trial that said the Defendant knew whether certain  
9 images were uploaded or not, whether he -- they could be auto-  
10 uploaded by the user such that he might not have knowledge of  
11 the 20,000 authors that might upload a picture, which would be  
12 a fair argument if there was evidence that there was no  
13 knowledge of that.

14           And I don't have access to the transcript from the  
15 trial. So the best I can do is point the Court to two items.  
16 One is the transcript from the Defendant's own interview which  
17 that interview was played in significant part for the jury from  
18 Volume 2, pages 42 to 43, starting on lines 20 on page 42 and  
19 going up to line 11 on page 43. And I will briefly review this  
20 here, and I have a copy of just those two pages for the Court  
21 if it wants it.

22           The agent asked Mr. Arthur, "And I guess going back"  
23 -- says, "And I guess, going back to the authors when they set  
24 up their author pages, how do you screen the images that they  
25 attach to their pen name or pseudonym or whatever?"

1           And the other agent says, "Avatar, if you would."  
2 And Mr. Pearson again says, "Yeah, the avatar they attach to  
3 their pen name or pseudonym." And Mr. Arthur responds, "Well,  
4 I -- it gets reviewed and I reject it. It can't be a human,  
5 you know, or copyrighted image." And Mr. Pearson says, "So you  
6 review each of them?" Mr. Arthur, "Yeah."

7           So I think that settles it as to Objection Number 2.  
8 He was aware. He had direct control. Nobody could upload a  
9 story. They also couldn't upload any images to it. There was  
10 some evidence that said he had some program that if somebody  
11 emailed an image over the email server, it would just  
12 automatically strip it. That's obviously not entirely true  
13 because some images made it to the website.

14           And there was no evidence of anybody having direct  
15 access to it. There was no testimony about that, any evidence  
16 whatsoever that somebody could just upload anything they wanted  
17 to the website. He was the full and sole administrator of the  
18 site. Everything that went on that site he controlled. And he  
19 admitted it in his own interview which we admitted at trial.

20           We think that's relevant not for Guidelines  
21 sentencing purposes for the calculation part of it but it is  
22 certainly important for this Court to consider when thinking  
23 about his knowledge and role in the administration of this  
24 website. He was the sole person who could control that, and he  
25 admitted that in his own interview.

1           In addition to that, his wife, Sandra Arthur, again,  
2 I don't have access to the trial transcript, but I do have  
3 access to the grand jury transcript which is, of course, what  
4 we use to guide her testimony at trial. And in her grand jury  
5 testimony starting on page 37, which was turned over to the  
6 Defendants, at line 20 up to line 8 on page 38, it basically  
7 says that, yes, he was the one that controlled that sort of  
8 stuff. He's the one that had access to it.

9           So it basically corroborates his own statements. I  
10 think his own statement is the thing to rely upon. But I'd  
11 just give that to the Court as additional information. I think  
12 both of those things came in at trial in the form of his own  
13 interview and in the form of Sandra Arthur's testimony. So for  
14 that reason, I think Objection 2 was improperly granted by the  
15 probation officer.

16           And I didn't give her much notice up until just  
17 before this hearing to let her know that. And I told her she  
18 didn't have access to the transcript anymore than I do. So  
19 it's understandable that she wouldn't necessarily know that  
20 fact. She didn't watch the trial and doesn't have the  
21 transcript anymore than I do. But I do know that those two  
22 facts are relevant to the consideration of Objection Number 2.  
23 That's all I have.

24           THE COURT: Thank you.

25           So the Court overrules the objections by the

1 Defendant for the reasons stated by Senior U.S. Probation  
2 Officer Cara (phonetic) Foster. I do overrule those  
3 objections, the ones we've talked about here as well as the  
4 ones that were merely written.

5           And I really can't add a whole lot to it. I agree  
6 with Officer Foster's -- Senior Officer Foster's responses.  
7 And I could speak about each one of them. I think I'd be  
8 redundant, and I request the lawyer before me not to be. And  
9 so I'd prefer not to do the same thing that I ask them not to  
10 -- you all not to.

11           I do grant the Government's objection on 2 to the  
12 Defendant's Objection 2. I remember that testimony  
13 specifically because a light went off in my head. I don't  
14 recall the grand jury testimony, of course, because I wasn't  
15 there. And I don't remember her testimony as to that point if  
16 she even testified. I don't recall, but I do remember that  
17 testimony as to Mr. Arthur's personally and being like the only  
18 one. He was the gatekeeper. So that's my ruling there. So I  
19 do grant that.

20           I don't -- it doesn't impact the Guidelines, but I  
21 think it's important to be accurate, as accurate as we can be.  
22 So I'll overrule all of the defense objections for the reasons  
23 stated and relied upon by the probation officer's response  
24 there.

25           And the Court has reviewed the presentence

1 investigation report prepared by Senior U.S. Probation Officer  
2 Cara Foster. As I've stated, I adopt that report as well as  
3 the application of the United States Sentencing Guidelines  
4 contained in the report.

5           The Total Base Offense Level, Mr. Arthur, to be 42,  
6 the Criminal History Category is I. The Guideline range is for  
7 basically Counts 1 through 9 are a total of 360 months to 1,080  
8 months. And we have supervised release in each count of one to  
9 three years. There's a fine of \$50,000 to \$250,000 that's  
10 available. There's no restitution. And, Mr. Berry, I don't  
11 believe there was any restitution that it was even discussed,  
12 right?

13           MR. BERRY: There was not, Your Honor.

14           THE COURT: And a \$100 mandatory special assessment  
15 in each count totaling \$900 for the Victims of Crime Act  
16 pursuant to the Victims of Crime Act payable to Victims of  
17 Crime Fund on sentencing.

18           There's one other matter I wanted to bring up, Mr. --  
19 remind me, Mr. Berry, about the Government's position on  
20 forfeiture. I know Mr. Esparza was here for the trial.

21           MR. BERRY: Your Honor, I have a direct quote that I  
22 am to read to you.

23           THE COURT: Excellent.

24           MR. BERRY: "Please order that all items listed in  
25 the preliminary order of forfeiture be ordered forfeited and

1 included in the JCC."

2 THE COURT: Okay.

3 MR. BERRY: I hope you understand that.

4 THE COURT: I do.

5 MR. BERRY: Okay, good. Because I claim no knowledge  
6 about forfeiture.

7 THE COURT: I just wanted to make sure.

8 MR. BERRY: And Mr. Esparza was apologetic that he  
9 couldn't be here. He shared that. I said what do you want me  
10 to tell Judge Counts. That's exactly what he asked me  
11 verbatim, so that's what I'm asking the Court.

12 THE COURT: I'm trying to remember. There was no --  
13 the parties short-circuited that part of the trial, as I  
14 recall, by agreement, right, Mr. Berry?

15 MR. BARRY: That is correct, Your Honor. Yes.

16 THE COURT: So any objection to that?

17 MR. BARRY: No, Your Honor.

18 THE COURT: All right.

19 With that then, Mr. Haygood, what would you have the  
20 Court consider as to Mr. Arthur? You or Mr. Bennett, either  
21 one or both.

22 MR. HAYGOOD: Well, Your Honor, we'd ask this Court  
23 to recommend that he be placed at FCI Buckner to serve his  
24 sentence. Of course, the application of the Guidelines range  
25 may be outside of the statutory maximum for some of these

1 offenses. And so we would ask the Court to consider an  
2 appropriate sentence within the statutory range for these  
3 offenses.

4 THE COURT: I will. I certainly will.

5 MR. HAYGOOD: Oh, FMC Buckner.

6 THE DEFENDANT: The medical center.

7 THE COURT: Thank you.

8 MR. HAYGOOD: The medical center, not the  
9 correctional institution. Obviously, my client has some health  
10 issues, as the Court is aware, and so it would just -- it would  
11 be best if he were in a facility where that could be handled.

12 THE COURT: Yes, sir.

13 MR. HAYGOOD: I know the Court has seen those and in  
14 our objections and request for annotations to the presentence  
15 investigation report.

16 The other thing, Your Honor, obviously, as the Court  
17 has just entered the forfeiture judgment, my client's funds  
18 have been depleted throughout his representation in this. If  
19 he does wish to appeal, I would ask the Court to appoint me as  
20 I am one of your CJA attorneys for appeal to appeal this case.

21 I know it's not often that we do the appeal of our  
22 own trials, but this is a very complex case. And since I'm  
23 already familiar with it, I believe that I can save everyone  
24 some time and money on this not having to have a new attorney  
25 come in and familiarize themselves with the multiple motions

1 and arguments that we've had in this case. So if my client  
2 does desire to appeal, I will of course handle the filing of  
3 the notice of appeal and all of those documents. But I would  
4 ask the Court to appoint me under the Criminal Justice Act to  
5 be the attorney responsible for his appeal.

6 (Pause)

7 THE COURT: If I didn't mention it, Mr. Arthur's  
8 ineligible for probation. I was just checking on that because  
9 I think I missed stating that.

10 MR. HAYGOOD: Yes, Your Honor.

11 THE COURT: Thank you.

12 Mr. Arthur, what would you like to say?

13 THE DEFENDANT: Nothing, Your Honor.

14 THE COURT: Mr. Berry?

15 MR. BERRY: Thank you, Your Honor.

16 With regards to the nature and circumstances of the  
17 offense, Your Honor, this is an unprecedented scale of  
18 obscenity crimes with over 20,000 stories that this Defendant  
19 administered on his website. It's also an unprecedented level  
20 of depravity in an obscenity case in terms of the content.

21 As Your Honor well remembers, there were stories  
22 about raping pregnant mothers, ripping the fetus from the womb,  
23 and using the fetus "as a condom" to engage in the necrophilia  
24 of that mother. The depravity of that content is quite  
25 seriously unprecedented.

1           With regards to the history and characteristics of  
2 the Defendant, the Defendant here bears evidence through the  
3 statements of the other victims on the part of the relevant  
4 conduct issue that he raped an adult woman while she was  
5 sleeping, he molested a four- to five-year-old child. And so  
6 this is not just a case about the text stories on the internet,  
7 but this is about a defendant who openly bragged about his  
8 sexual interest in children, openly bragged about how he could  
9 rape adults and children alike with impunity and get away with  
10 it. He bragged about that on his own website in terms of  
11 communications with other people.

12           In terms of the seriousness of the offense, promoting  
13 respect for the law, and providing just punishment, Your Honor,  
14 Mr. Arthur was not a hobbyist. This was not a casual part-time  
15 endeavor. This was a full-time job for this man -- not a job,  
16 his own business -- for more than two decades. He actively  
17 tried to thwart law enforcement by advising his members how to  
18 select usernames that were not similar to usernames that they  
19 utilize on other online identities.

20           Instead of using his technological talents, which  
21 were quite considerable, obviously, by being the administrator  
22 of this website, instead of using those talents to assist the  
23 world in identifying exploiters of children, he used them to  
24 create an online community that celebrated and encouraged the  
25 exploitation of children.

1           His house in the remote area of Terlingua is  
2 basically a metaphor for his criminal activity. He created a  
3 safe place for like-minded pedophiles to congregate to share  
4 their true stories of raping children and their fantasies of --  
5 hopefully fantasies only -- of murdering such children. He's  
6 kind of like a drug dealer who invites thousands of people to  
7 his house to trade drugs because he believes that trading drugs  
8 should be legal. And so he does so and creates this community  
9 in this place and the safe space to do that.

10           In terms of the 3553(a) factor regarding deterrents  
11 and public protection, as Your Honor is well aware, there is  
12 both specific and general deterrents. With regard to specific  
13 deterrents, there is a need to deter this individual who has  
14 flagrantly violated the law every day for 25 years and he did  
15 so for profit. There is a general deterrent's need to deter  
16 and obscenity consumer, and I think this is really important,  
17 from becoming an obscenity purveyor.

18           Again, this is not an individual who was just a  
19 hobbyist and just a consumer. We need a sentence that deters  
20 that hobbyist, that mere consumer, from going from consumer to  
21 administrator and distributor. I believe a significant  
22 sentence in that regard would exponentially reduce the  
23 proliferation of such content by deterring it.

24           So what I mean by that is there is already an archive  
25 of the Defendant's Mr. Double site located on another domain

1 name on the internet that we are actively pursuing and might  
2 ultimately be bringing into this Court at some point. And it  
3 is a person who lauds Mr. Arthur's website and applauds it as  
4 something that is a great First Amendment thing to do. And so  
5 there needs to be a sentence that deters copycats and people  
6 who think, yeah, this is good stuff and there's a First  
7 Amendment right to this and we should engage in more  
8 proliferation.

9           In terms of unwarranted sentencing disparities, this  
10 is unlike any other obscenity case I'm aware of, both in terms  
11 of the volume of proliferation is staggering. And I tried to  
12 think of a way to put this in concrete numbers to understand  
13 the volume of it. And the only thing I could point to was  
14 Exhibit 18, which I know you remember very well. So I'm going  
15 to remind you because I had to go back and remind myself which  
16 exhibit that was.

17           That was an author's balance report, and it was a  
18 spreadsheet database of 129 pages. And we didn't put in every  
19 single one of them, but Exhibit 18 was one that we put into  
20 evidence. And it shows only a list of authors from August of  
21 1999. So he started the website a few years earlier, about  
22 three years earlier, and in August of 1999, it shows columns of  
23 authors, the stories they wrote, and the number of downloads  
24 that had occurred for each of those stories because you might  
25 recall there was a time where the Defendant was actually paying

1 authors --

2 THE COURT: Right.

3 MR. BERRY: -- for their volumes so -- or for the  
4 downloads as a way to get more stories, new content in. And so  
5 he was keeping track of that information.

6 He ultimately stopped tracking that because he  
7 stopped paying authors, so there's not comprehensive data for  
8 the full 25 years. So we have a snapshot. We have a snapshot  
9 in August of 1999 in Exhibit 18. And if you total up the  
10 number of downloads for the stories by all of the authors that  
11 he had listed there, it was over 32,358,345 total downloads of  
12 stories as of August of 1999. 32 million downloads of this  
13 disgusting depraved stuff in the first three years.

14 I'm assuming, I'm going to give the benefit of the  
15 doubt that that's an aggregate amount over those three years  
16 and not August 1999 or even 1999 or the last 12 months. I'm  
17 going to call that an aggregate because I don't know any  
18 different. And so I think that's the fairest way to look at  
19 that for the Defendant.

20 But even giving that benefit of the doubt, 32 million  
21 in the first three years, so you just gently very easily  
22 extrapolate that out and you can get above 100 million  
23 downloads of this stuff over the lifetime of this website very  
24 easily. And that's generous. I think that's a conservative  
25 estimate.

1           So when you think about that volume and you think  
2 about his own characteristics involving contact defending  
3 against children, we believe that this sentence should be  
4 significant. I'm not going to specify a particular sentence.  
5 I think a Guideline sentence is appropriate in this case, and  
6 the Guidelines are 360 to 1,080. But we think a Guideline  
7 sentence would be appropriate. And I appreciate your time,  
8 Your Honor.

9           THE COURT: Thank you.

10           The Court does not depart from the recommended  
11 sentence pursuant to the Sentencing Reform Act of 1984 which I  
12 have considered in an advisory capacity and the sentencing  
13 factors set forth in 18 U.S.C. Section 3553(a), which I have  
14 considered in arriving at a reasonable sentence.

15           I find the Guideline range in this case and each  
16 count to be fair and reasonable. The Defendant is placed in  
17 the custody of the United States Bureau of Prisons to serve a  
18 term of imprisonment as follows: For Count 1, 240 months; as to  
19 Count, 60 months, that term to run consecutively to the term of  
20 imprisonment in Count 1; Count 3, 60 months, that term to run  
21 consecutively to the term in Count 2; Count 4, 60 months to run  
22 consecutively to the term of imprisonment in Count 3; Count 5,  
23 60 months to run consecutively to Count 4; Count 6, 60 months  
24 to run concurrently with Count 5; Count 7, 60 months to run  
25 concurrently to Count 6; Count 8, 80 months to run concurrently

1 to Count 7; and Count 9, 60 months to run concurrently to Count  
2 8.

3           Upon release from the United States Bureau of  
4 Prisons, you're placed on supervised release to serve a term of  
5 three years in each count -- as to each count, those to run  
6 concurrently. The standard and mandatory conditions of  
7 supervision are imposed.

8           Additionally, the Defendant shall not view or possess  
9 any visual depiction as defined in 18 U.S.C. Section 2256,  
10 including photographs, film, video, picture, or computer or  
11 computer generating a picture, whether it may have been  
12 produced by electronic, mechanical, or other means of sexually-  
13 explicit conduct as defined by that same statute.

14           Second, the Defendant shall not have direct contact  
15 with any child the Defendant knows or reasonably should know  
16 being under the age of 18 without permission of the probation  
17 officer. And, of course, there's instruction as to if there is  
18 any direct contact, Special Condition Number 3. Defendant  
19 shall submit to the search condition of supervision within the  
20 Western District of Texas.

21           The Court imposes a \$50,000 fine, and there's a \$100  
22 mandatory special assessment pursuant to the Victims of Crime  
23 Act as to each count totaling \$900. Your presentence report  
24 will be sealed.

25           You have the right to appeal your conviction and your

1 sentence. And you must file a notice of appeal in writing  
2 within 14 days of the entry of this judgment. If you're unable  
3 to afford the appellate cost, those services will be provided  
4 at no expense to you.

5 I will leave that to the magistrate judge. But, Mr.  
6 Haygood, I'll pass along your request, and I will encourage him  
7 to do so. I'll also recommend Buckner, we said FMC, right?

8 MR. BENNETT: FM --

9 MR. HAYGOOD: FMC, Your Honor.

10 THE COURT: Okay. I wanted to make sure Mr. Bennett  
11 was ready to jump on that. I'll recommend that.

12 MR. BENNETT: Thank you, Your Honor.

13 THE COURT: Of course, Mr. Arthur, that may or may  
14 not be something the BOP is able to do. And in the life of  
15 your sentence, they may be able to at some point if they're not  
16 initially. And that may also be something they can do  
17 initially. But they'll make that decision, not me, of course,  
18 considering a number of things that the Court's not privy to.

19 Mr. Berry, anything further on behalf of -- oh, and  
20 if there's any question about the forfeiture, we've got that  
21 taken care, right? And everybody --

22 MR. BERRY: If Your Honor is --

23 THE COURT: Do you want to make it --

24 MR. BERRY: -- adopting the language that I --

25 THE COURT: I'm adopting the exact language that you

1 stated.

2 MR. BERRY: Okay.

3 THE COURT: Because I don't have it in front of me,  
4 but --

5 MR. BERRY: Ordering that all items listed in the  
6 preliminary order of forfeiture be ordered forfeited and  
7 included in the JCC.

8 THE COURT: Yes, sir. And that's done without  
9 objection and by agreement, so.

10 MR. BERRY: And the only other thing, Your Honor, is  
11 if it would -- if the Court would consider stating -- and if  
12 you said and I didn't hear it this time, if the Court had  
13 granted all the objections, would the sentence have been the  
14 same?

15 THE COURT: It would have been had I granted all the  
16 objections. Thank you. And I meant to say that. Even had I  
17 granted all of Defendant's objections, I would have come to the  
18 same conclusion as to the sentence. You'll notice that the  
19 range goes up to over 1,000 months and begins at 360. The  
20 total that I counted is 480 months sentencing. So well toward  
21 the lower end.

22 Mr. Haygood, anything more from you or Mr. Bennett?

23 MR. HAYGOOD: Not at this time, Your Honor.

24 THE COURT: Mr. Bennett, are you good? Mr. Bennett?

25 MR. BENNETT: No. Thank you, Your Honor.

1           THE COURT: Mr. Arthur, I remand you to the custody  
2 of the United States Marshals to serve your sentence. Thank  
3 you to the attorneys. I appreciate everybody.

4           MR. HAYGOOD: Thanks, Judge.

5           (Proceedings concluded at 3:08 p.m.)

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C E R T I F I C A T I O N

I, Dipti Patel, court-approved transcriber, hereby  
certify that the foregoing is a correct transcript from the  
official electronic sound recording of the proceedings in the  
above-entitled matter.

*Dipti Patel*

DIPTI PATEL, AAERT NO. 997

DATE: September 13, 2021

LIBERTY TRANSCRIPTS